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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,562	02/17/2006	Hans Hoogland	T7093(C)	6500
201 7590 02/18/2010 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER SOOHOO, TONY GLEN				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
02/18/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary

Application No.

10/568,562

Applicant(s)

HOOGLAND, HANS

Examiner

Tony G. Soohoo

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/226)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. PCT/EP2004/008255, filed on 21 AUG 2003.

Election/Restrictions

2. Applicant's election with traverse of the election of Group I in the reply filed on 6/11/2009 is acknowledged. The traversal is on the ground(s) that the claims are novel and inventive over the evidence of the art US 6,280,075 to CADEO. This is not found persuasive because the statement fails to provide support for such allegation, and does not specifically point out the common special technical feature between the groups which advances over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is unclear in the meets and bounds of the volume of the conduits. It is noted that the numerical value of "the dispensing volume" is undefined thereby one can

not determine 10 vol% of "the dispensing volume. Furthermore "10 vol% of " [read as "ten volume percent of" ?] is unclear. For examination purposes it is read as best and reasonably understood as "10% of the volume of..."

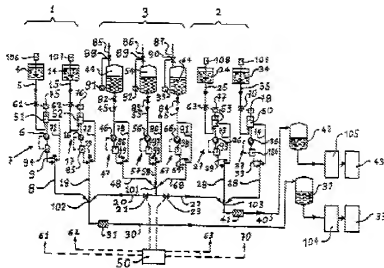
Also, Claim 9 recites the limitation "[the volume of] the conduits" in line 16, and "the last mixer". There is insufficient antecedent basis for this limitation (plural conduits) in the claim. The claim does not previously establish plural conduits or a last mixer, and the conduit being between a last mixer and the dispensing unit. There is no correlation or enumeration of a number of mixers (i.e. first mixer, or last mixer) established by the recited "mixing means".

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by CADEO 6,280,075 (cited on PTO 1449).

The CADEO reference discloses an apparatus for preparing and dispensing a component with one or more post-added ingredients, the apparatus may be operated in batches in that a single production run (i.e. a shift or day) from start of the machine to the stopping of the machine may be considered as a batch. The apparatus including a frame comprising :



- a source unit (3) comprising one or more component reservoirs (44, 54, 64);
- selection means for selecting the desired components and/or their ratio (47, 57, 67)
- a source unit (1 or 2) comprising component reservoirs for post added ingredients (4, 14; or 24, 34) wherein the post added ingredients are arranged in at least two families (one family 1 while the other family is 2);
- selection means for selecting the desired post-added ingredients (7, 17, 27, 37);
- processing means (102, 103, 41) suitable for mixing the components from the component reservoirs and the post-added ingredients;
- a dispensing unit (30, 40) for dispensing the resulting composition of ingredients,

Regarding the clause, *"wherein each family of post-added ingredients is composed such that each member thereof is highly similar in colour, taste and consistency such that any residue which may remain in the processing means will not have an adverse effect on the perception of the product by the end-user thereby*

allowing a variety of food products to be prepared and dispensed through the dispenser in batches without the need of extensive cleaning operations when there is a product switch " and to the particular type of materials (i.e. oil and water) to be utilized in the apparatus claims. Such language has been fully considered, however is afforded no structural distinction to the claims. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). "[A]pparatus claims cover what a device *is*, not what a device *does*" (emphasis in original) *Hewlett-Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

In this case, the contents of feeding food products through the dispenser is directed to the type of contents to be used in the device, and the consideration of cleaning the apparatus when one desires is directed to what the device does, or how the structure is treated in a method step. The issues of cleaning does not structurally alter the physical dispenser, selector, and processor, as claimed.

Regarding claim 2, the dispensing unit is suitable to be operated use in a batch process and dispensing only one product at a time, if the apparatus is operated in such a manner.

Regarding claim 3, note a processing means comprises a pre-mixer unit (3).

Regarding claim 4 , note there is a dedicated mixer (102, 103) for each family of post-added ingredients (1, 2).

Regarding claim 10, the limitation of "wherein the batch of food product dispensed has a volume of 1 to 200ml is prepared in a time within 1 to 60 seconds" is directed to the amount of work product being utilized and the speed of method of

operation of the apparatus. This language is immaterial any further physical makeup of the elements which make up the structure of the apparatus claims. See, *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). *Hewlett-Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over CADEO 6,280,075 (cited on PTO 1449). .

The Cadeo reference discloses all of the recited subject matter as established above, however is silent as to the relative size volume of the conduits being "less than 10 vol% of the dispensing volume". It is noted that the numerical value of "the dispensing volume" is undefined thereby one can not determine 10 vol% of "the dispensing volume.

It is common knowledge that 1) a smaller length (and volume) of pipe conduit would provide a shorter time of travel of the fluids between processing elements, and 2) a shorter pipeline (and its smaller volume) would also reduce the cost of making the invention since each linear feet of pipe used is reduced. It would have been an obvious matter of design choice to shorten or make smaller the pipeline and its volume to such a

range such as recited in the claims, since such a modification would have involved a mere change in the size of a component in order to provide shorter processing times, and a lower cost of construction of the system. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 9, the phrase "*wherein the ratio of the volume of the product that is dispensed to the volume of the mixing means is at least 5:1.*" is directed to the operation of the device and is not afforded any further structural distinction within the language and construction of apparatus claims. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). *Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Response to Arguments

8. Applicant's arguments filed 10/22/2009 have been fully considered but they are not persuasive.
9. Applicant argues that the claims distinguishes over the prior art whereby the instant claims require a batch operation. Applicant characterizes the Cadeo reference as a continuous operation. The argument is not well taken. The recitation of "batch" operation does not structurally distinguishes the claim from the prior art. Cadeo is fully capable to operate in a batch operation, for example in a production run, or day's operation. The time between starting the Cadeo's device and stopping the device may be considered as a "batch".
10. Applicant further argues that the instant apparatus is capable of manufacturing a variety of food produces. This is unpersuasive since applicant points to an allegation to

the use of the device and does not establish any structural and physical distinction between the recited elements making up the claimed invention with that of the corresponding elements of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. Applicant further argues that the reservoirs are arranged in a particular "families", in this case, at least two families of post added ingredients and not having an adverse effect from any residue (page 9 of the remarks) or cross contamination. This not persuasive, since "arranged in families" is a naming convention to the type of materials used in the device and does not structurally define elements of the invention itself.

12. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a structure particular to preventing cross contamination, and a structural element which permits no need of extensive cleaning during product switch) are not recited in the rejected claim(s). It is noted that one may choose not to extensively clean the prior art structure if it is so desired. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

13. Regarding the size of the conduits of the instant invention, that issue has been addressed in the rejection under 35 USC 103, above.

14. Regarding the issues of the amount of product to be made and the time in which it is produced, this language is directed to the intended operation and use of the invention. Such issues are considered in a method claim, however since the instant claims are apparatus claims, such remarks are immaterial to the distinction of patentable structure.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/
Primary Examiner, Art Unit 1797

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Primary Examiner
Art Unit 1797